

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

12-M-23

RANDALL LOSE,

Defendant.

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE, that upon the attached affidavit, the United States of America, by WILLIAM J. HOCHUL, Jr., United States Attorney for the Western District of New York, and Maura K. O'Donnell, Assistant United States Attorney, of counsel, hereby moves this Court at 2 Niagara Square, Buffalo, New York, on a date and time convenient to the Court, for an extension of time for the Rule 48(b) dismissal date of the Complaint.

DATED: Buffalo, New York, July 13, 2012.

Respectfully submitted,

WILLIAM J. HOCHUL, JR.
United States Attorney

S/ Maura K. O'Donnell

BY:

MAURA K. O'DONNELL
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202
(716) 843-5700, ext. 816
Maura.O'Donnell2@usdoj.gov

TO: Fonda D. Kubiak, AFPD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

12-M-23

RANDALL LOSE,

Defendant.

A F F I D A V I T

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

MAURA K. O'DONNELL, being duly sworn, deposes and states:

1. Your deponent is employed as an Assistant United States Attorney in the Buffalo, New York office of the United States Attorney for the Western District of New York. As such, your deponent is fully familiar with the pleadings and proceedings herein.

2. Your deponent submits this affidavit in support of the Government's Notice of Motion that requests this Court extend the Rule 48(b) dismissal date of the criminal complaint until September 28, 2012.

3. The Court previously entered a conditional order of dismissal on March 29, 2012, dismissing the criminal complaint,

without prejudice, on July 27, 2012 pursuant to Rule 48(b) of the Federal Rules of Criminal Procedure.

4. Your deponent has been advised that due to a backlog at the Regional Computer Forensic Laboratory, the analysis of the defendant's computer equipment is not yet complete. It has been requested that analysis of the computer be expedited to the extent possible. However, it is impossible for the parties to engage in meaningful plea negotiations until the forensic examination is complete. Counsel for the defendant consents to the adjournment and joins in the request to extend the Rule 48(b) dismissal date.

5. Since the plea agreement the defendant may enter into would provide the defendant with certain benefits that would not be available post-indictment or trial, a continuance outweighs his right and interest to an early indictment and trial. An extension of the Rule 48(b) dismissal date, in order to allow the defendant to enter into the written plea agreement, outweighs the defendant's right and interest in an early indictment and trial. Since the defendant may plead guilty, the public benefits in the extension by assuring itself a conviction without having to expend the time and resources associated with presenting the case to a grand jury, answering pre-trial motions and conducting a trial.

WHEREFORE, for the reason set forth herein, the government respectfully requests the Court extend the Rule 48(b) dismissal date previously set by this Court until September 28, 2012, and to continue to exclude the time from the Speedy Trial Act Clock, as well as from the time requirements under Rule 5.1 of the Federal Rules of Criminal Procedure.

S/ Maura K. O'Donnell

MAURA K. O'DONNELL
Assistant U.S. Attorney

Sworn to before me this 13th
day of July, 2012.

S/ Kathleen M. Rieman

KATHLEEN M. RIEMAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 9-23-13

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

12-M-23

RANDALL LOSE,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2012, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant on this case:

Fonda D. Kubiak, AFPD

S/ Kathleen M. Rieman

KATHLEEN M. RIEMAN
Legal Assistant